



One Hundred First Legislature - First Session - 2009
Introducer's Statement of Intent
LB 327

Chairperson: Rich Pahls
Committee: Banking, Commerce and Insurance
Date of Hearing: February 2, 2009

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 327 is a bill introduced at the request of the Nebraska Department of Banking and Finance (Department). Its primary purpose is to update the laws relating to bank dividends, confidential Department records, trust company pledges, the definition of loan broker, installment sales companies' reports, and closing of delayed deposit services offices; to establish standards for certain fiduciary accounts; to provide for a change of control procedure for Sale of Checks/Funds Transmission licensees; and to provide for the annual renewal of the three depository financial institution wildcard statutes.

Section 1 would revise Section 8-101.01 of the Nebraska Banking Act to incorporate new Section 2 into the Act.

Section 2 would adopt a new section requiring state-chartered banks which hold fiduciary accounts to pledge collateral to secure amounts in those accounts which exceed the insurance or guarantee coverage provided by the Federal Deposit Insurance Corporation. Included within this section are provisions for acceptable types of collateral and the authority for these banks to make deposits with affiliates of the bank and to collateralize those deposits. Public funds deposits are exempted from the requirements of the section, as those funds are subject to collateral requirements under other statutes. This section tracks federal law, 12 CFR 9.10(b), and is intended to provide security for fiduciary deposits in excess of federal deposit insurance coverage.

Section 3 would amend Section 8-112 of the Nebraska Banking Act, to clearly provide that examination reports, investigation reports and information relating to such reports of the Department remain confidential records of the Department even when such reports and information are transmitted to a financial institution or entity that is the subject of the report or information, and to provide that the confidentiality restrictions of the statute apply to any representative or agent of the financial institution or entity. This proposal would provide further protection for the Department's confidential information.

Section 4 would amend Section 8-163 of the Nebraska Banking Act to provide that the Director of the Department would have the authority to allow a state-chartered bank to pay dividends

even though it previously had losses that equaled or exceeded its undivided profits on hand. Current law outlaws any future dividend payments. This amendment is intended for those situations where the bank improves its financial condition.

Section 5 re-enacts Section 8-1,140, the wildcard statute for banks. The law provides parity between state-chartered banks and their federal counterparts. It must be re-enacted on an annual basis due to the Nebraska Constitution.

Section 6 would amend Section 8-209 of the Nebraska Trust Company Act to change the amount of pledged securities that trust companies and trust departments of banks must pledge to the Department to maintain their status as trust companies/trust departments. Current law provides that these institutions must maintain a pledge of \$100,000.00 in par value of securities. This would be changed to a sliding scale in which the amount of securities to be pledged would be based on the market value of trust assets held by the institution. The institutions would be further required to determine the market value of the trust assets at the end of each calendar year, and, if its current pledge of securities is less than required by law, increase the amount of the pledge within sixty days. This intent of the amendment is to provide greater security in the event of liquidation of the institution.

Section 7 would amend Section 8-210 of the Nebraska Trust Company Act to clarify that a reference in the statute to “such securities” is to securities described in Section 8-209.

Section 8 re-enacts Section 8-355, the wild-card statute for state-chartered savings and loan associations. The law provides parity between state-chartered associations and their federal counterparts. It must be re-enacted on an annual basis due to the Nebraska Constitution.

Section 9 would amend Section 8-602(6) to eliminate the \$1.50 per page fee that the Department is required to charge for copying documents. With this amendment, copying charges would be governed by Section 84-712(3)(b), which provides that charges for public records shall be the actual cost of making copies available. The purpose of the amendment is to reduce the overall cost to a person requesting Department records.

Section 10 would amend Section 8-1001 of the Nebraska Sale of Checks and Funds Transmission Act to provide a definition of “control.” Control would be defined to include those who have the power to direct the management or policies of an entity, persons who hold certain company positions, and persons with a specified minimum amount of stock ownership or capital contributions. This provision coordinates with Sections 11 and 12 of LB 327, which would require the Department’s approval of a change of control of a licensee.

Section 11 amends Section 8-1001.01 of the Nebraska Sale of Checks and Funds Transmission Act to incorporate new Section 12 into the Act.

Section 12 would adopt a new section in the Nebraska Sale of Checks and Funds Transmission Act to provide for change of control notice procedures for a licensee under the Act, including the submission of forms, financial and fitness standards, a maximum sixty-day review period by the Department, and the granting of the right to appeal to persons denied a change of control.

Section 13 re-enacts Section 21-17,115, the wild-card statute for state-chartered credit unions. The law provides parity between state-chartered credit unions and their federal counterparts. It must be re-enacted on an annual basis due to the Nebraska Constitution.

Section 14 would amend Section 45-190(5) by changing the definition of “loan broker.” The amendment narrows the current definition by providing that a person will be a loan broker only if an advance fee is expected or received from a borrower, rather than from any source, and expands the definition by changing the term “consideration” to “advance fee,” which includes more elements than “consideration.” These changes are intended to address current lending alternatives.

Section 15 would amend Section 45-346.01 of the Nebraska Installment Sales Act to change the date an installment sales licensee must submit its audited financial statements to the Department from the current 45 days after the audit is completed to as required by Section 45-348 or at the request of the Director of the Department. This amendment coordinates with Section 16 in that both provisions are intended to improve the efficiency of the reporting process.

Section 16 would amend Section 45-348 of the Nebraska Installment Sales Act to provide that one of the conditions for the annual renewal of an installment sales license would be the submission of the licensee’s most recent annual audit.

Section 17 would amend Section 45-922 of the Delayed Deposit Services Licensing Act to provide that the Director of the Department may suspend or revoke a license issued under the Act if a licensee has abandoned its place of business for a period of thirty days or more, rather than the current sixty days. The purpose of the amendment is to allow the Department to act quickly to preserve customer information.

Sections 18, 19, and 20 are the enactment date and amendatory repeal provisions for the bill.

Section 20 provides the emergency clause for Section 4, which amends Section 8-163, and for Sections 5, 8, and 13, which are the wildcard re-enactments.

Principal Introducer:

Senator Rich Pahls